COURT NO.2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition no. 251 OF 2001 (S/S)

U.P. State Road Transport Corporation,
Through its Regional Manager, Dehradun

---------- Petitioner

Versus

1. Presiding Officer, Labour Court, Dehradun
2. Sanjay Kumar Nautiyal S/o Shri Ghanand,
R/o 7/5 Labour Colony, Saharanpur, District Saharanpur

--------- Respondents

Sri A.N. Sharma, learned counsel for the petitioner.
Shri Gopal Narain, learned counsel for Respondent no. 2

Dated: 04.08.2005

Hon'ble P.C. Verma, J.

By means of this writ petition, the petitioner has prayed for writ of Certiorari quashing the impugned order dated 31.07.2000 passed by Respondent No.1 –Presiding Officer, Labour Court, Dehradun in Reference Case No.25 of 2000 whereby the learned Labour Court ordered that the Respondent No. 2 shall be reinstated in the services with 50% back wages with minor punishment of stoppage of two increments without cumulative effect.

2. Brief facts of this case are that Respondent No. 2-Sanjay Kumar was working on the post of Conductor in the U.P. State Road Transport Corporation (***hereinafter referred to as the Corporation).*** On 22.01.1996, he was assigned duty of conductor in Bus No.UP.15/9496, which started from Saharnapur to Hardwar. A surprise checking was conducted by the checking staff in which it was found that Respondent No.2 had not entered the place of journey and destination thereof in the tickets and waybill of the tickets distributed. He had entered only 0.50 paisa in the waybill against the ticket money charges, which was Rs. 6.50 from one

passenger. Thus, the Respondent No.2 tried to misappropriate the income of the vehicle and also did not make correct entry in the waybill. The Respondents No.2 was served a chargesheet on 13.09.1996 for the said misconduct in which 13 charges were framed against Respondent No. 2. On 12.12.1996, the Respondent No. 2 filed his reply and as the reply was found unsatisfactory, a departmental enquiry was initiated against him. In the departmental enquiry, the charges of serious misconduct proved against Respondent No.2 and the punishing authority after considering the entire material on record vide his order dated 13.05.1998 removed Respondent No.2 from service. Feeling aggrieved, the Respondent No.2 raised an industrial dispute, which was decided in the following terms:-

> **"Whether the termination of the services of the applicant/workman Shri Sanjay Kumar Nautiyal S/o Shri Ghanand, Conductor by the employers from 13.05.1998 is justified and/or legal? If no, to which benefit/ compensation the applicant/workman is entitled and to what extent?"**

3. After the receipt of the reference, the Labour Court issued notices to the parties to file their written statement/objections. The labour court after considering the entire record of the enquiry and the oral and documentary evidence led by the parties held that the punishment awarded to the workman/Respondent No.2 by the enquiry officer was harsh in nature. The labour court on the basis of the evidence on record came to a conclusion that the punishment awarded to Respondent No.2 was not proportionate to the charges leveled against him. Therefore, the labour court set aside the order of removal and directed for reinstatement of Respondent No.2 with minor punishment of stoppage of two wage increments without cumulative effect and payment of 50% back wages.

4. I have heard learned counsel for the parties and perused the entire material on record.

5. The learned Tribunal has rightly recorded a finding and came to a conclusion that when the Bus was inspected, the tickets were issued to all the passengers and the necessary entires were also being made in the demand form, but the place of journey from where it starts and where it ends was not clearly filled. The impression at the back of the tickets could also not come out because the carbon paper was not rightly applied. The amount that was alleged in the charge was very meager, therefore, the Tribunal has rightly held that the punishment awarded to Respondent No. 2 was harsh in nature and the charges leveled against the him were not proportionate to the punishment awarded to him and held the punishment awarded to Respondent No. 2 to be shockingly disproportionate.

6. I am in full agreement with the findings recorded by the learned Tribunal. In my opinion, in view of the facts and circumstances of the case, the punishment of removal was excessive in comparison to the charges leveled against the Respondent No.2. The Labour Court in exercising its powers under Section 6(2-A) of the U.P. Industrial Disputes Act rightly set aside the order of removal and has awarded lesser punishment.

7. I do not find any infirmity or perversity in the award impugned. However, in my opinion, I find that the 50% back wages as awarded by learned Labour Court is grossly excessive. Therefore, the Respondent no. 2 shall not be entitled for any back wages. This portion of the award of the Labour Court should be modified to this extent only.

8. The writ petition is partly allowed. The Respondent No.2/ workman shall not be paid any back wages.

(P.C. Verma, J.)

Rajeev Dang